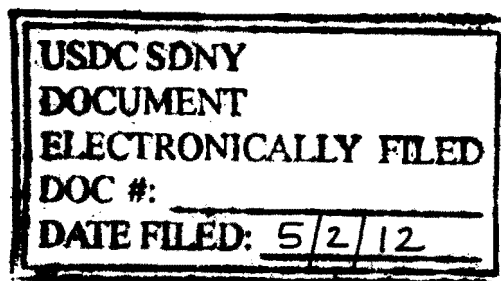


UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



-----X  
HYPOXICO, INC.,

Plaintiff,

– against –

COLORADO ALTITUDE TRAINING LLC,  
and LAWRENCE KUTT,

Defendants.  
-----X

02 Civ. 6191 (TPG)

**ORDER**

A trial was held in this case beginning on January 30, 2012. Prior to trial, the parties filed motions *in limine*, and defendants filed a *Daubert* motion. The court resolved the motions on the record during the trial as follows:

Defendants' motion to exclude evidence of plaintiff's commercial embodiments was granted with respect to the issue of infringement but denied with respect to the issue of damages.

Defendants' *Daubert* motion to exclude plaintiff's expert damages testimony was granted with respect to the lost profits testimony but denied with respect to the royalty testimony.

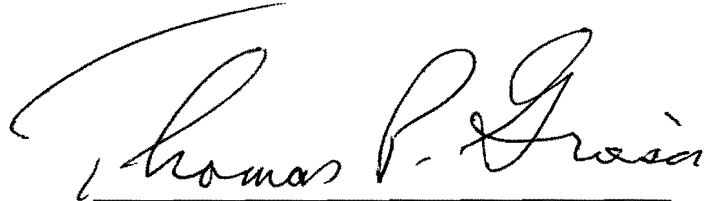
Plaintiff's motion to preclude defendants from relying on 28 U.S.C. § 1498(a) was denied.

Plaintiff's motion for exclusion of information printed from the internet is denied as moot.

This order resolves the motions listed as numbers 176, 178, 180, and 183 on the docket.

SO ORDERED.

Dated: New York, New York  
May 2, 2012

A handwritten signature in black ink, reading "Thomas P. Griesa". The signature is written in a cursive style with a large, sweeping initial "T".

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Thomas P. Griesa  
U.S. District Judge